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IN THE

SUPREME COURT OF THE UNITED STATES

No. 72-824

BOARD OF EDUCATION OF THE CITY OF PLEASANT GROVE,
Petitioner,

versus

LINDA STOUT, ET AL., JEFFERSON COUNTY BOARD OF EDUCATION,
and THE UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

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IN THE

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BOARD OF EDUCATION OF THE CITY OF PLEASANT GROVE,
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LINDA STOUT, ET AL., JEFFERSON COUNTY BOARD OF EDUCATION,
and THE UNITED STATES OF AMERICA,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Fifth Circuit

The Board of Education of the City of Pleasant Grove, Alabama, prays that a Writ of Certiorari issue to review that portion of the judgment of the United States Court of Appeals for the Fifth Circuit entered September 7, 1972, applicable to Petitioner.

OPINIONS BELOW

1. The opinion of the United States Court of Appeals for the Fifth Circuit dated September 7, 1972, not yet reported, is printed below at Appendix page A-1. The opinion dealt with four separate appeals on a consolidated basis. The case here involved is No. 71-2979.

2. The several decrees and orders of the United States District Court for the Northern District of Alabama from which the appeal by petitioner was taken to the Court of Appeals have not been reported, and are included in the Appendix at pages A-9, A-12, A-14, A-18, and A-22. The decrees in these consolidated cases dealt at great length with issues as to other school districts not here involved. Only the portions of the decrees relevant to Pleasant Grove are reproduced.

QUESTIONS PRESENTED

1. Whether the courts below were justified in ordering, in effect, the dissolution of an independent school district legally created under state law, the creation and operation of which is admittedly consistent with the governing principles as to school desegregation, merely in order to enforce a decree directing the board to purchase and operate school buses for the sole purpose of bringing negro pupils from outside the district in order to maintain an arbitrary racial balance.

2. Whether an independent school district can be required to spend funds beyond its fiscal means to acquire and operate buses for the sole purpose of transporting pupils from outside the district in order to maintain a racial balance.

STATEMENT OF THE CASE

This petition presents a novel issue among the multitude of factual and legal problems which the numerous desegregation cases have presented.

The school desegregation suit, of which this controversy is a part, was commenced in 1965 against the Jefferson County school system, of which at that time the Pleasant Grove schools were a part. Pleasant Grove was incorporated as a municipality in 1936. Its population (5600) is

predominantly white. In a series of orders the District Court directed the newly created Pleasant Grove system to admit to its schools all black students living within an area of two miles who desired to attend the schools. The court also ordered Pleasant Grove to construct additional facilities in order to accommodate black students. In response to that decree the City levied an additional property tax and a new sales tax to provide financing for new school buildings at an initial cost in excess of $600,000.

As a result of continuing proceedings in the cases, the District Court, on August 24, 1971, ordered the consolidation of an area outside of the City into the Pleasant Grove School District, and in this order, for the first time, directed that the City provide transportation for any pupils living more than two road miles from the schools. The City had never owned or operated school buses and the testimony showed without dispute that its available funds were inadequate to support the purchase and operation of a transportation system without substantial adverse affect on the school budgets.

The areas ordered to be incorporated outside the City limits of Pleasant Grove were composed almost wholly of blacks and the order to incorporate them and to furnish transportation was for the sole purpose of creating and maintaining a racial balance in Pleasant Grove Schools. Pleasant Grove did not, and does not, object to incorporation of the outside area into its school system, nor to the admission of black students residing in the incorporated area or elsewhere. Its position as to transportation was that it did not have the facilities, funds or personnel to operate such a system and that such transportation could and should readily be furnished by the Jefferson County system which had for many years operated a large and well organized bus system.

By its orders dated September 8, 14, 18 and 24 (Appendix A-9, A-12, A-14, A-18 and A-22) the District Court directed that Pleasant Grove acquire and operate a transportation system on penalty of forfeiture of its entire school system. Upon failure of Pleasant Grove to acquire and operate buses, the District Court by its final order of September 24, 1971 (Appendix A-22) undertook to transfer the properties, facilities and personnel of the Pleasant Grove System to the Jefferson County Board of Education.

The Fifth Circuit sustained the order, with a reservation that the transfer of the system should not be regarded as permanent. As to this, it stated:

> Sovereignty should be returned when Pleasant Grove demonstrates to the district court's satisfaction by clear and convincing evidence that it is able and intends to comply with the court's orders concerning its role in the desegregation of the Jefferson County School District. When that showing is made, then the court should withdraw its prior order, but with the clear understanding that it will be reinstated should the district's commitment to desegregation falter.

ARGUMENT

The decree of the District Court directing the final and unconditional transfer of all the properties of the Pleasant Grove School District to the Jefferson County School System represents an unprecedented intrusion by a federal court into a state's financial and political structure. The Pleasant Grove School District was established pursuant to state law, and the validity of its creation under that law has not been questioned in this case or elsewhere.

No authority in the state, administrative or judicial, would have the power under state law to make the order which was entered by the district court. The effect of the order was not only to transfer ownership and control of school properties of a value in excess of $2 million, but necessarily involved the assignment of the proceeds of local taxes, voted in accordance with state law by the citizens of Pleasant Grove, to the control of county authorities, and perhaps more importantly, the disruption or complete destruction of the administrative organization of the Pleasant Grove Board.

There was no finding by the district court or by the court of appeals that the continued ownership of these properties by Pleasant Grove and operation of its independent school system was in any way a violation of the obligation to maintain a unitary non-segregated school system.

Neither court below has said or intimated that the formation of this so-called "splinter" school district was "motivated by a purpose of or had the effect of avoiding the implementation of a unitary school system" within the reach of **Swann v. Charlotte-Mecklenburg Board of Education**, 402 U. S. 1; **Wright v. Emporia**, ... U.S. ..., or **U. S. v. Scotland Neck**, ... U. S. ..., the decisions relied upon by the Court of Appeals for its judgment here. The

decrees with respect to Pleasant Grove and the other separate districts involved in the appeal below in fact dealt with the racial composition of the schools as if they were a part of the Jefferson County system. Pleasant Grove did not appeal from this aspect of the decree and takes no exception to it. The district court decrees did not purport to abolish the other separate districts and transfer their properties, personnel, administration and funds to the County as it did in the case of Pleasant Grove. This drastic order as to Pleasant Grove was solely punitive or coercive in nature with respect to the narrow issue of whether Pleasant Grove should be compelled to acquire and operate a transportation system for black pupils living outside its district.

This question does not arise if, as we insist, the court below should not have ordered Pleasant Grove to acquire and operate a transportation system for the benefit of county pupils. If that order is nevertheless sustained, we urge the Court to remand this aspect for reconsideration of this hasty, harsh and indeed confiscatory decree.

This is not just a case of exercise of the power of the court to enforce its decrees. We do not admit that the Pleasant Grove Board were in wilfull contempt of court when this order was entered. They had been presented with an improper, unnecessary and arbitrary "election", which they were still attempting to resolve before the court when they were cut off. The Board specifically disclaimed any election to abandon and convey its system and properties. The order was entered without any hearing as to its scope and terms, and was final and not conditioned upon compliance with the busing order or other action by the Board or others.

In addition to the sweeping confiscation of all of the cash and property of the Pleasant Grove school system, the abrupt injection into this order, without previous

suggestion or notice, of the mandate that taxes levied under State law by a municipality be paid over to a different subdivision of the State must surely be unique, even in the legal chaos of these school cases.

The result of this unprecedented decree is to punish, not the possible majority of the Board whom the court might conceivably have found contumacious after a proper hearing, but the citizens and taxpayers of Pleasant Grove. If the court had, after hearing, given an opinion or order affording the municipal authorities or the voters an opportunity to respond to any recalcitrance on the part of the Board, the matter could unquestionably have been resolved. No such opportunity was afforded by a decree which purported irrevocably and finally to transfer title to the properties from their public owners, and even to transfer the levy and collection of taxes from the city to the county—all in complete disregard of state law.

This was judicial over-kill. It was not necessary, it was premature, it was arbitrary, and it was inapt. If punishment was in order—we say it was too early—the wrong people were penalized.

The modification of the decree by the Fifth Circuit so as to require the District Court to re-transfer the system upon a showing of compliance is only a partial and inadequate recognition of the injustice of the decree. A more temporary and far less burdensome taking of property has been invalidated by this court as a denial of due process. **Fuentes v. Shevin**, 407 U.S. 67, 40 LW 4692 (1972).

The damage done by the taking of an entire school system for an indeterminate period is obviously to a large extent irreparable, not only as to the loss of the use of valuable property, but in the loss of the Superintendent, and the destruction of the whole administrative mechanism of local control.

The case thus presents in many respects the situation involved in the Richmond School case now pending on petition for certiorari in this court in No. 72-549, **Richmond School Board v. Virginia Board of Education.** In that case the Court of Appeals of the 4th Circuit held that a U. S. District Court could not compel the restructure of governmental agencies of a state for the purpose of achieving racial balance in the public schools. **Bradley v. School Board of City of Richmond, Virginia,** 462 F.2d 1058 (1972). The decree there reversed was held to be contrary to the decisions of this Court in **Swann v. Charlotte-Mecklenburg Board of Education,** 402 U. S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971), and **Spencer v. Kugler,** 326 F.Supp. 1235 (D.N.J. 1971), aff'd mem. 404 U. S. 1027, 92 S.Ct. 707, 30 L.Ed.2d 723 (1972).

In view of the close similarity of the issues here presented with those presented by the petition in the **Richmond** cases, supra, involving the fundamental and extremely sensitive question of unnecessary interference by federal courts with state political subdivisions, it is suggested that the Court may wish to consider this petition in conjunction with No. 72-549.

Respectfully submitted

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Certificate of Service

I certify that service in accordance with Rule 33 has been made by mail on counsel of record for all parties in the court below.

Jos. F. Johnston
Attorney for Petitioner

APPENDIX A

In the
United States Court of Appeals
For the Fifth Circuit

No. 71-2804*

Linda Stout, Et Al.,
Plaintiffs-Appellants-
Cross-Appellees,

United States of America,
Plaintiff-Intervenor-Appellant,

versus

Jefferson County Board of Education, Et Al.,
Defendants-Appellees,

Board of Education of the City of Pleasant Grove,
Defendant-Intervenor-
Appellee-Cross-Appellant.

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* The above styled cases have been consolidated either at the suggestion of the parties, or by this court for its own convenience.

No. 71-2979*

Linda Stout, Et Al.,
Plaintiffs-Appellees,

United States of America,
Plaintiff-Intervenor-Appellee,

versus

Jefferson County Board of Education, Et Al.,
Defendants-Appellees,

Board of Education of the City of Pleasant Grove,
Defendant-Intervenor-Appellant.

No. 72-1102*

Linda Stout, Et Al.,
Plaintiffs,

United States of America,
Plaintiff-Intervenor-Appellee,

Charles Owens, Et Al.,
Movants-Appellants,

versus

Jefferson County Board of Education, Et Al.,
Defendants-Appellees.

No. 72-2056*

Linda Stout, by her father, and
next friend, Blevin Stout,
Plaintiff-Appellant,

versus

Jefferson County Board of Education, Et Al.,
Defendants-Appellees,

United States of America,
Intervenor.

Appeals from the United States District Court for the Northern District of Alabama

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(September 7, 1972)

Before Thornberry, Clark and Ingraham,
Circuit Judges.

By the Court: The issues in all of the above cases relate to desegregation of the schools operated by the Jefferson County Board of Education, Jefferson County, Alabama. In *Stout v. Jefferson County Bd. of Education,* 448 F.2d 403 (5th Cir., 1971), we remanded the case to the district court with directions that it require the school boards (including within the terms of its order a direction to any splinter school board, i.e., those created since the filing of the original desegregation suit) to implement a plan which complies with *Swann v. Charlotte-Mecklenburg Board of Education,* 402 U. S. 1. Several school districts were affected, including the districts of Pleasant Grove, Vestavia,

Midfield and Homewood all having been created since 1965. In *Stout, supra,* we said of these post-desegregation suit school districts:

> "Likewise, where the formulation of splinter school districts, albeit validly created under state law, have the effect[2] of thwarting the implementation of a unitary school system, the district court may not, consistent with the teachings of *Swann v. Charlotte-Mecklenburg, supra,* recognize their creation.[3]

The district court on remand correctly interpreted our prior order and directed the splinter districts to accept a proper role in the desegregation of the county system. Pleasant Grove refused to accept its role and was unwilling to live within the district court's orders. After giving Pleasant Grove an opportunity to conform to the overall plan and being faced with Pleasant Grove's demonstrable reluctance to commit itself to the effort, the district court ordered that the Jefferson County Board of Education take up the operation of the Pleasant Grove district schools. Pleasant Grove appealed.

Because the issue of splinter districts was fundamental to the total desegregation effort of the Jefferson County district, and because the Supreme Court accepted cer-

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[2] The process of desegregation shall not be swayed by innocent action which results in prolonging an unconstitutional dual school system. The existence of unconstitutional discrimination is not to be determined solely by intent. Cooper v. Aaron, 358 U.S. 1, 79 S.Ct. 1401, 3 L.Ed.2d 5 (1958); Bush v. Orleans Parish School Board, 190 F.Supp. 861 (E.D.La. 1960); aff'd sub nom City of New Orleans v. Bush, 366 U.S. 212, 81 S.Ct. 1091, 6 L.Ed. 2d 239 (1961); United States v. Texas, 330 F.Supp. 235, Part II (E.D.Tex. 1971); aff'd as modified, United States v. Texas, 447 F.2d 441 (5th Cir., 1971).

[3] See, Lee et al. v. Macon County Board of Education, 448 F.2d 746 (5th Cir., 1971)."

tiorari in two Fourth Circuit cases,[1] whose views on splinter districts were contrary to that of this circuit, we have held this case for the Supreme Court's determination.

In *Wright v. Council of the City of Emporia*, ... U.S. ... (1972) [40 L.W. 4807, June 22, 1972], and *United States v. Scotland Neck City Board of Education*, ... U. S. ... (1972) [40 L.W. 4817, June 22, 1972], the Supreme Court reversed the Fourth Circuit and cited our prior order in this case and *Lee v. Macon County Board of Education*, 448 F.2d 746 (1971), with approval. *See Cisneros v. Corpus Christi Independent School District*, ... F2d ... (5th Cir., 1972) [No. 71-2397, August 2, 1972].

In light of the Supreme Court's reversal of the Fourth Circuit in *Wright, supra*, and *Scotland Neck City Board, supra*, and its reliance on our prior *Stout* order, we Affirm the district court's determinations as regards the splinter school districts.[2] We note, however, that

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[1] *Wright v. Council of the City of Emporia*, 442 F.2d 570 (4th Cir., 1971), cert. granted 404 U.S. 820; and *United States v. Scotland Neck City Board of Education*, 442 F.2d 575 (4th Cir., 1971), cert. granted 404 U. S. 821.

[2] The district court on this issue concluded:

"The Court: I think for this first phase of this case, I can go ahead and announce my conclusions, because they will be governing what would come up next.

"I do think that all the school systems are governed by the same standard, that is, Vestavia and Homewood be governed by the same standards as Midfield and Pleasant Grove. But the standard is not to deny the possibility of a creation of separate systems that is allowed under state law unless that state law interferes with the disestablishment of a dual school system. There is nothing inherently wrong with it. The test, as I see it and under the Fifth Circuit has directed me, is to look at the particular school district involved and see whether the recognition of that district with whatever modifi-

the splinter district or districts are not forever vassals of the county board. The courts should not remove local control indefinitely. Orders based on the splinter district's refusal to accept the role dictated by *Wright, supra, Lee v. Macon, supra,* and *Stout, supra,* should be reviewed school year to school year, or more frequently as may be appropriate. Sovereignty should be returned when Pleasant Grove demonstrates to the district court's satisfaction by clear and convincing evidence that it is able and intends to comply with the court's orders concerning its role in the desegregation of the Jefferson County School District. When that showing is made, then the court should withdraw its prior order, but with the clear understanding that it will be reinstated should the district's commitment to desegregation falter.

It is obvious that the merits of the desegregation plan ordered implemented for the 1971-72 school year are moot. This result is not an abdication of judicial duty. It is a consequence of the deference required of us to the action of the Supreme Court in granting certiorari to the precise issue involved in this case. As far as the

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cation would be made thwart the implementation of a unitary school system in the county as a whole. Then if it does, then to that extent the Court would disregard the creation or existence of that system. I think it is, however, pretty clear that the demography, the location of people and their colors is different in the area generally. In the southern part of the county, from that end of midwest, I guess you would call it, that is areas where Pleasant Grove and Midfield are located, so that it very well may be that more recognition in that sense of the viability of Homewood and Vestavia can be given than may be given to Midfield and Pleasant Grove, simply because of the reality of the situation of where the people live. I think the approach basically is to look on the entire county system, including these four separate areas, as a single unit, and to see what can be done in terms of assuring the unitary system. And if and to the extent these separate systems interfere with that process, then they are going to have to give way to that effect, to that extent."

merits of the district court's order pertain to the school years 1972-73 and thereafter, the issues are not moot. Therefore, on the merits we vacate the district court's orders so far as they relate to the following attendance zones:

> Wenonah (Lipscomb), Midfield, Brighton, Fultondale (Springdale), Minor and Leeds, and require the District Court to forthwith conduct such further proceedings as that Court may determine necessary or appropriate in the course of applying the desegregation remedy outlined in this court's *en banc* opinion in *Cisneros, et al. v. Corpus Christi Independent School District, supra.*

With the further exception regarding the plan's overall transportation requirements and majority to minority transfer provisions, the district court's student assignment plan for 1972-73 is approved as complying with *Swann.* So far as such order pertains to the transportation requirements of minority to majority transfers and the priority which those transfers shall receive, the court's order is Vacated, with instructions to implement a majority to minority transfer program as provided in *Singleton v. Jackson Municipal Separate School District,* 419 F.2d 1211 (5th Cir., 1970), en banc. See also *Brown v. Board of Education of the City of Bessemer, Alabama, et al.,* ... F.2d ... (5th Cir., 1972) [No. 71-2892, July 11, 1972]; *Lee v. Macon County Board of Education,* 448 F.2d 746 (5th Cir., 1971). *Compare Cisneros, et. al. v. Corpus Christi Independent School District, supra.*

The issue raised in the most recent appeal, No. 72-2056, pertains to the construction of a new school, whose location was determined by assertedly neutral, i.e., nonracial, criterion. The district court, in its order approving this new construction, concluded that even if a new

study was ordered which was not color blind but color conscious, the location decision would in all probability remain. The school is projected in the Berry attendance zone. Strong cases have been made that the decision being color blind cannot stand. An equally strong case has been made on the basis of pupil location and physical geography that this school site is necessary. Appellate resolution of the propriety of this school, we believe, may be deferred in that the district court's reconsideration of the Wenonah school attendance zone may include a solution which will free additional capacity or require clustering with the neighboring Berry zone, thereby eliminating a present need for a new facility by freeing additional classroom space, or the court may find that the new site is still required. In any event, a color conscious study is required. *Swann v. Charlotte-Mecklenburg Board of Education, supra; Singleton v. Jackson Municipal Separate School District, supra; Lee v. Macon County Board of Education, supra; United States v. Board of Public Instruction of Polk County,* 395 F.2d 66 (5th Cir., 1968).

No. 72-1102 is Affirmed. *See Bailey v. Patterson,* 369 U.S. 31 (1962); *Alabama ACLU v. Wallace,* 456 F.2d 1069 (5th Cir., 1972).

The order of the district court is Affirmed in part, Vacated in part, and in part Remanded for further proceedings not inconsistent herewith.

APPENDIX B

United States District Court, Northern District of Alabama, Southern Division

Linda Stout, et al., Plaintiffs, vs. Jefferson County Board of Education, et al., Defendants.	Civil Action 65-396-S.

AMENDED ORDER

In response to petitions for modification and clarification filed by several of the defendant boards of education, the orders of August 24, 1971, and August 25, 1971, in the above styled cause are hereby amended to read as follows:

I. Student Assignment

• • • • • • • •

(d) **Pleasant Grove Board of Education** ("the Pleasant Grove board"). The Pleasant Grove board shall be solely responsible for the education of the children residing in the area indicated on Attachment T-1 in grades 7-11 for 1971-72 and in grades 1-12 for subsequent years. Twelfth grade students in the Pleasant Grove attendance area for 1971-72 shall be assigned to Hueytown H.S. except as may otherwise be elected under the provisions of paragraph IV(b) hereof. The county board shall for the 1971-72 school year educate the students in grades 1-3 residing outside the Pleasant Grove city limits and as many as 120 students in grades 4-6 residing outside the Pleasant

Grove city limits, utilizing the Dolomite school facility for such purpose. The Pleasant Grove board shall educate for the 1971-72 school year all students in grades 1-6 residing in its city limits and any students in grades 4-6 residing outside the city limits as cannot be accomodated by the county board at Dolomite under the preceding sentence. The Pleasant Grove board shall furnish free transportation to students within its school attendance zone but residing outside the city limits and more than two miles from their assigned school. The Pleasant Grove board shall be required to accept majority-to-minority transfers and other transfers under the provisions of paragraph IV(a) hereof from the Jefferson County school system so long as the Pleasant Grove school system has a student enrollment that is less than 25% black. If the Pleasant Grove board is unable to acquire the Woodward school by the beginning of the 1972-73 school year, a new plan shall be prescribed by the court which pairs the schools in the City of Pleasant Grove with the Woodward school.

• • • • • • • •

IV. **Transfers**

(a) With the approval of the board of education (or both boards, where between systems) a student may transfer—

(1) **from** any school which has a 75% or higher enrollment of students of his own race; or

(2) **to** any school which has less than 25% enrollment of students of his own race; or

(3) **between** schools where the effect is to reduce the difference between the white-to-black student ratios of the two schools.

Such transfers shall be on a space-available basis; but the board of education receiving the student shall not be allowed to refuse transfers under this paragraph to stu-

dents of one race where a greater number of transfers has been allowed by it for students of another race. A certificate showing the current enrollment of black and white students from the principal of the sending school in (1) and (3) above and from the principal of the receiving school in (2) and (3) above shall accompany the transfer request and be retained by the board.

• • • • • • • •

(d) The Homewood, Midfield, Pleasant Grove and Vestavia boards shall be required to accept transfers of black students under IV(a) hereof from the Jefferson County school system until the percentage of black students in their system reaches 25%. Students transferring into these systems shall be entitled to transportation on existing bus routes on a space available basis.

• • • • • • • •

V. Separate Systems

(a) For those systems receiving students from an unincorporated area of Jefferson County and having complete responsibility for educating all students residing in the area for all grades, the Jefferson County board or the tax collector for Jefferson County shall pay to such system the *ad valorem* school taxes collected from the area for which the separate system is responsible. Where two or more systems are educating students at different grades for the same area, the systems affected shall attempt to negotiate an agreement regarding the division of ad valorem school taxes; and, if negotiations fail, this court retains jurisdiction to resolve these financial questions.

• • • • • • • •

Done and Ordered this the 8th day of September, 1971.

/s/ SAM C. POINTER, JR.
United States District Judge

APPENDIX C

In the United States District Court
For the Northern District of Alabama
Southern Division

Linda Stout, et al., Plaintiffs,
United States of America,
Plaintiff-Intervenor,

v.

Jefferson County Board of Education, et al., Defendants,
Board of Education of the City of Pleasant Grove,
Defendant-Intervenor,
Board of Education of the City of Homewood, et al., Defendants,
Board of Education of the City of Vestavia Hills, et al.,
Defendants,
Board of Education of the City of Midfield, et al., Defendants.

Civil Action.
No. 65-396.

ORDER

(Filed September 14, 1971)

The plaintiffs having applied for an order to show cause on September 14, 1971, to require compliance by the defendant, the Pleasant Grove City Board of Education with the August 24, 1971 and September 9, 1971 Orders of this Court; and it being alleged that the Pleasant Grove City Board of Education, and Superintendent

Richard McBride, while having knowledge of the terms of the August 24, 1971 and September 9, 1971 Orders have not complied with the provisions thereof providing free transportation to those students who reside outside of the Pleasant Grove City limits, and more than two (2) miles from the schools to which they were assigned in the Pleasant Grove attendance zone.

It Is Ordered:

That on the 16th day of September, 1971, at 4:00 o'clock P.M., in the Courthouse of this Court at Birmingham, Alabama, the Pleasant Grove School Board and Superintendent of Schools, Richard McBride, shall appear and show cause, if any they have, why the relief set forth in the September 14, 1971 Application for an Order to Show Cause of the Plaintiffs should not be granted, and why this Court should not enter such orders as may be necessary and appropriate to ensure the full implementation of the Court Orders in this cause.

It is further Ordered that the United States Marshal serve a copy of this Order on the Pleasant Grove Board of Education and on Superintendent Richard McBride.

Done and Ordered at Birmingham, Alabama, this 14th day of September, 1971.

SAM C. POINTER, JR.
United States District Judge

APPENDIX D

United States District Court
Northern District of Alabama
Southern Division

Linda Stout, et al.,
Plaintiffs,

vs.

Jefferson County Board of Education, et al.,
Defendants.

Civil Action
65-396-S.

MEMORANDUM OF OPINION

(Transportation—Pleasant Grove)

On September 14, 1971, the plaintiffs moved the court to transfer responsibility for public education in the Pleasant Grove attendance zone from the Pleasant Grove City Board of Education to the Jefferson County Board of Education or, in the alternative, for a contempt order against the Pleasant Grove board members and Superintendent. The reason for the request was the alleged failure of such city system to provide transportation to students in the zone living more than two miles from their assigned school, which had been required by the court's orders of August 24, 1971, and September 8, 1971. A hearing on the motion and the board's response thereto was heard on September 16, 1971, with evidence there being adduced by both parties.

The orders required free transportation for those students living outside the city limits and more than two miles from their assigned schools inside Pleasant Grove. No standard was provided in the orders regarding the

measurement of the distance; and whereas all of the students assigned to Pleasant Grove from the unincorporated area of Dolomite live more than two miles "road distance" from the Pleasant Grove schools, virtually all of them are within a two mile radial distance of the school. It is undisputed that no transportation has been provided in the first week of school even for those outside the two mile radius.

It was the intent of the court that the "county students" being zoned into the Pleasant Grove attendance area—which was in effect the condition upon which the court was, under the remand mandate from the Fifth Circuit Court of Appeals, willing to permit the continued existence of the separate Pleasant Grove system—should have the same entitlement to free transportation that they would have received had they been assigned to a school operated by the county board. The county board has, according to the evidence, measured school distance for transportation purposes by road mileage and has been so reimbursed by the state through the minimum school program, one of the factors for allocation of which funds is bus mileage for students living over two miles from their school. It seems patently sound to determine the need for transportation on such a basis (or at least according to ways and easements dedicated for public use) rather than "as the crow flies."

The need for transportation should be measured by road mileage and not radial distance, and the court's orders should hereafter be so construed. (There appear to be some city students who may reside more than 2 miles so measured—the orders did not, and do not, preclude the city board from providing transportation to such students, but this is a matter which can be left to the board's determination in view of its ultimate political responsibility to city residents.)

In view of the lack of clarity on the matter of transportation in the earlier orders, the court concludes that prospective corrective action is more appropriate than a judicial response premised on past failure. Accordingly, the court's approach is to direct that transportation on the proper basis be made available as rapidly as the circumstances permit.

At the direction of the court the Jefferson County Board of Education has since the hearing reviewed its own transportation requirements and has determined that it has several buses which are not needed and which can be offered for sale. Although several years old, these buses, according to the county board, are in good working conditions, have been and are certified for operation by state board of education safety officials, and in fact have been used this school year by the county board. Three buses should be adequate for Pleasant Grove to fulfill its transportation requirements, and a training session for school bus drivers is already scheduled to be held in the county Monday afternoon, September 20, 1971. The court is directing that at least three buses be selected by the Pleasant Grove board from those available from the county board, and that these be placed in operation Tuesday morning. The basic purchase price of $500.00 for each bus purchased is not beyond the financial capabilities of the Pleasant Grove system. Under the current statutes of Alabama a substantial part of the operational costs can be recovered by the Pleasant Grove system through the state minimum program fund allocations.

The Pleasant Grove board has its financial inability to both operate its schools (and fund its construction program) and provide transportation. At the time of such declarations the availability of buses from the county was not known, nor did the board present estimates for revenues for the coming year.

If the Pleasant Grove board cannot, for financial reasons or otherwise, operate its school system under the terms that have been set forth in the earlier orders, then it should not be required to do so by the court but should be allowed to "return" the system to the county board for further administration. Accordingly, while being ordered to implement the transportation portion of the court's order commencing with Tuesday, September 21st, the board is being given the option of returning the system to the county board effective Monday, September 27th. The board is being required to indicate by one o'clock Friday, September 24th whether it will continue to operate the system under the conditions laid down by the court or will transfer the system to the county board effective September the 27th. A failure to indicate its decision shall be taken as a decision to transfer responsibility to the county board.

A formal order is being entered concurrently herewith.

This the 18th day of September, 1971.

/s/ SAM C. POINTER, JR.
United States District Judge

APPENDIX E

United States District Court
Northern District of Alabama
Southern Division

Linda Stout, et al.,
Plaintiffs,
vs.
Jefferson County Board of Education, et al.,
Defendants.
Civil Action 65-396-S

ORDER

(Transportation—Pleasant Grove)

This cause came on for hearing on September 16, 1971, on the plaintiffs' "Motion to enjoin operation of the Pleasant Grove school system or, alternatively, motion to cite for contempt for failure to obey judgment." Upon a consideration of such motion and of the evidence adduced in connection therewith, it is Ordered, Adjudged, and Decreed as follows:

1. Prior to 8:00 o'clock A.M., Tuesday, September 21, 1971, the Board of Education of the City of Pleasant Grove shall purchase, and the Board of Education of Jefferson County shall sell, at least three school buses from among those 'surplus' buses being offered for sale by the county board as not needed to fulfill its own transportation requirements. Officials of the Pleasant Grove Board of Education, or their representatives, shall have their choice of the buses from among those being offered by the county board. The price for each bus shall be $500.00, provided however, that if the average price realized by the

county board on the sale of the remaining buses in accordance with the method normally employed by it on the sale of surplus buses exceeds $500.00, such difference shall be added to price of each bus acquired by Pleasant Grove and thereupon be payable by the Pleasant Grove Board of Education to the Jefferson County Board of Education.

2. Commencing with the school day Tuesday, September 21, 1971, the Pleasant Grove Board of Education shall provide free transportation to and from school for all students residing outside the city limits of Pleasant Grove but who are under the September 8, 1971, order of this Court assigned to attend a school in Pleasant Grove and reside more than two miles (measured along public roads, rights-of-way or easements) from the school to which assigned. This mandate shall not be construed as in any way limiting the right of the Pleasant Grove Board of Education (if it chooses to do so) to provide transportation to other students (inside or outside the city limits) assigned to Pleasant Grove schools or to students from Pleasant Grove attending schools outside Pleasant Grove. The Superintendent of the Pleasant Grove school system is directed to post notice, by 1:00 o'clock Monday, September 20, 1971, at each Pleasant Grove school as to the routes and stops established by him for the transportation herein required.

3. The requirements of paragraph 2 of this order are binding upon the members of the Board of Education of the City of Pleasant Grove (and their successors in office), upon the Superintendent of the schools of Pleasant Grove (and his successors in office), and upon their agents, servants and employees unless and until otherwise ordered by this court. However, if the Pleasant Grove Board of Education determines that it cannot, for economic or other reasons, operate its school system with the transportation requirements herein imposed, it shall have the right to transfer responsibility for the general administration and

supervision of public education within the Pleasant Grove zone (as established under the order of September 8, 1971) to the Jefferson County Board of Education. Such transfer shall be effective commencing with the school day, Monday, September 27, 1971; and the Pleasant Grove Board of Education is hereby directed to file with the court (with a copy on the other parties hereto) by 1:00 o'clock P.M. Friday, September 24, 1971, a written notice indicating whether it has elected to continue its operation of the Pleasant Grove school system (under the terms of this order and of the September 8, 1971, order) or has elected to transfer all further responsibilities to the Jefferson County Board of Education."

(a) The transfer of responsibilities to the Jefferson County Board of Education, if such option be elected by the Pleasant Grove Board of Education, shall not be effective until Monday, September 27, 1971. A determination by the Pleasant Grove Board of Education to elect such option shall not relieve the members, Superintendent, officers, agents, servants and employees of such Board from their obligation to carry out the requirements of paragraphs 1 and 2 of this order for the school days, Tuesday, September 21, 1971, through Friday, September 24, 1971.

(b) A transfer of responsibilities to the Jefferson County Board of Education under the provisions of this order shall automatically (effective Monday, September 27, 1971) vest in the Jefferson County Board of Education all funds, properties (real and personal), tangible and intangible rights (including interests under contracts), certificates of deposit, bond receipts or entitlements, accrued or unaccrued tax revenues or entitlements, school allocations, and other assets being held by or for the benefit of the Pleasant Grove schools or the Pleasant Grove school system, subject however, to all liabilities and obligations of such

schools or the school system. Unless and until the Pleasant Grove Board of Education files a notice (see above) indicating its election to continue operation of its system under the terms of this order, the members, Superintendent, officers, agents, servants and employees of such Board are hereby enjoined from incurring any new financial obligation (other than that required by this order) and from disbursing funds other than for previously incurred obligations or in the ordinary course of operations.

4. A copy of this order shall be served upon the members of the Board of Education of the City of Pleasant Grove and its Superintendent and upon the Superintendent of the Jefferson County school system (The provisions of this order were on September 18, 1971, communicated verbally by the court to both Superintendents and to the Chairman of the Pleasant Grove Board of Education). Copies shall be served on all other parties to this suit by service upon counsel of record.

5. The clerk of the District Court for the Northern District of Alabama shall forward this order, together with the plaintiffs' motion upon which based, the answer filed on behalf of the Pleasant Grove Board of Education, and papers related thereto to the Court of Appeals for the Fifth Circuit, before which is presently pending an appeal from the August and September 1971 orders in this cause. An election by the Pleasant Grove Board of Education under paragraph 3 of this order to continue operation of its system in accordance with the orders of this court shall not be taken as any abandonment of its appeal from such orders.

Ordered this the 18th day of September, 1971.

/s/ SAM C. POINTER J.
United States District Judge

APPENDIX F

United States District Court
Northern District of Alabama
Southern Division

Linda Stout, et al.,
Plaintiffs,

vs.

Jefferson County Board of Education, et al.,
Defendants.

Civil Action
65-396-S

ORDER

Upon consideration of the "Notice of Board of Education to operate its own system without transportation" filed this date, it is Ordered, Adjudged and Decreed that such Notice does not constitute a notice to operate its school system in accordance with the decrees of this court and that, accordingly, the Board of Education of the City of Pleasant Grove is deemed to have elected to transfer responsibilities for the general administration and supervision of public education within the Pleasant Grove zone (as established under the order of September 8, 1971) to the Jefferson County Board of Education pursuant to the provisions of paragraph 3 of the order of this court of September 18, 1971, such transfer to be effective as of Monday, September 27, 1971.

It is further Ordered that, to the extent the members of the Board of Education of Pleasant Grove, its superintendent, agents, servants, and employees fail to execute any documents or acts needed to effect such transfer, the Clerk

of the United States District Court for the Northern District of Alabama is hereby, under the provisions of Rule 70 of the Federal Rules of Civil Procedure, directed to perform such acts, and that this order be taken as Judgment divesting the Board of Education of Pleasant Grove and investing the Board of Education of Jefferson County with all real or personal property of the Pleasant Grove Board of Education effective September 27, 1971.

This the 24th day of September, 1971.

SAM C. POINTER J.
United States District Judge